
HOUSE BILL No. 1755

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-35.

Synopsis: Municipal food and beverage tax. Provides that a municipality that has not previously imposed a food and beverage tax may impose a municipal food and beverage tax at a rate of up to 1%. Provides that the municipality may use the revenue from the municipal food and beverage tax to: (1) reduce a property tax levy; (2) provide property tax relief; (3) pay debt service or lease rentals; (4) pay capital project costs; (5) provide operating revenue; (6) pay municipal pension liabilities; or (7) pay for another municipal purpose.

Effective: Upon passage.

Klinker

January 21, 2003, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1755

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 35. Municipal Food and Beverage Tax**

5 **Sec. 1. This chapter applies to a municipality that has not**
6 **imposed a food and beverage tax under this article.**

7 **Sec. 2. Except as otherwise provided, the definitions in IC 36-1-2**
8 **apply throughout this chapter.**

9 **Sec. 3. As used in this chapter, "bonds" has the meaning set**
10 **forth in IC 5-1-11-1.**

11 **Sec. 4. As used in this chapter, "department" refers to the**
12 **department of state revenue.**

13 **Sec. 5. As used in this chapter, "obligations" has the meaning set**
14 **forth in IC 5-1-3-1(b).**

15 **Sec. 6. (a) The legislative body of a municipality may adopt an**
16 **ordinance to impose an excise tax known as the municipal food and**
17 **beverage tax on transactions described in section 10 of this**

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chapter.

(b) Before a municipal legislative body may adopt an ordinance to impose a municipal food and beverage tax under this chapter, the legislative body must hold a public hearing on the proposed ordinance. Notice of the time, date, and place of the public hearing must be given in accordance with IC 5-3-1.

(c) A municipal food and beverage tax may be imposed at a rate of:

- (1) one-quarter of one percent (0.25%);
- (2) one-half of one percent (0.5%);
- (3) three-quarters of one percent (0.75%); or
- (4) one percent (1%);

of the gross retail income received by a merchant from a transaction described in section 10 of this chapter. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

(d) The municipal food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

Sec. 7. (a) Except as provided in subsection (b), the legislative body of a municipality that has imposed a municipal food and beverage tax under this chapter may adopt an ordinance to decrease the municipal food and beverage tax rate.

(b) If the municipality has outstanding bonds, leases, obligations, or other evidences of indebtedness that are payable from a municipal food and beverage tax imposed under this chapter, the legislative body may not decrease the municipal food and beverage tax rate below a rate that would produce one and twenty-five hundredths (1.25) times the total of the highest annual payment requirements due on those bonds, leases, obligations, or other evidences of indebtedness, to their final maturity.

(c) For purposes of subsection (b), the determination of a tax rate sufficient to produce one and twenty-five hundredths (1.25) times the total of the highest annual payment requirements shall be based on an average of the municipal food and beverage tax collections for the immediately preceding three (3) years if the municipal food and beverage tax has been imposed for the immediately preceding three (3) years. If the municipal food and beverage tax has not been imposed for the immediately preceding three (3) years, the tax may not be reduced below a rate that would produce one and twenty-five hundredths (1.25) times the total of

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the highest annual payment requirements due on those bonds, leases, obligations, or other evidences of indebtedness, based upon a study by a qualified public accountant or financial adviser.

Sec. 8. The legislative body of a municipality that has imposed a municipal food and beverage tax under this chapter may adopt an ordinance to repeal the municipal food and beverage tax if no bonds, leases, obligations, or other evidences of indebtedness of the municipality that are payable from the municipal food and beverage tax are outstanding.

Sec. 9. The clerk of a municipality that has adopted an ordinance under this chapter shall immediately send a certified copy of the ordinance to the department.

Sec. 10. (a) Except as provided in subsection (c), a municipal food and beverage tax imposed under section 6 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the municipality in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant that ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

(c) The municipal food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 11. (a) A municipal food and beverage tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department.

(b) Within sixty (60) days following the end of each calendar year, the department shall notify the municipal fiscal officer of the

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total amount of municipal food and beverage taxes paid in the municipality for that calendar year.

(c) The department is entitled to retain an administrative fee each month for the collection and distribution of revenues from a municipal food and beverage tax imposed under this chapter. The administrative fee is one-tenth of one percent (0.1%) of the total municipal food and beverage taxes collected in the municipality for that month.

(d) The administrative fee retained by the department under this section may only be used to pay the administrative costs of the department incurred in the collection and distribution of a municipal food and beverage tax imposed under this chapter.

Sec. 12. The amounts received from a municipal food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the municipal fiscal officer upon warrants issued by the auditor of state.

Sec. 13. (a) The fiscal officer of a municipality that has imposed a municipal food and beverage tax under this chapter shall establish a municipal food and beverage tax receipts fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

(b) Money earned from the investment of money in the fund becomes a part of the fund.

Sec. 14. (a) Revenue derived from the imposition of a municipal food and beverage tax under this chapter may be treated by the municipality as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the municipality.

(b) The department of local government finance may not reduce a municipality's:

- (1) property tax levy for a particular year; or
- (2) maximum property tax levy;

by the amount of revenue received from a municipal food and beverage tax imposed under this chapter.

Sec. 15. A municipality may use revenues from the imposition of a municipal food and beverage tax under this chapter for one (1) or more of the following purposes:

- (1) To reduce the municipality's property tax levy for the ensuing budget year.
- (2) To provide property tax relief to taxpayers or classes of taxpayers, to the extent permitted by the Constitution of the State of Indiana.

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- (3) To pay debt service or lease rentals on:
 - (A) bonds;
 - (B) leases;
 - (C) obligations; or
 - (D) any other evidence of indebtedness of the municipality.
- (4) To pay the costs of any capital project.
- (5) To provide operating revenue.
- (6) To pay pension liabilities of the municipality.
- (7) For any other purpose that the municipal legislative body determines is in the best interests of the residents of the municipality.

Sec. 16. (a) Bonds, obligations, or other evidences of indebtedness issued under this chapter:

- (1) are payable solely from revenues received under this chapter, any other moneys legally available for that purpose, or any combination of these sources; and
- (2) may, in the discretion of the municipality, be sold at a negotiated sale at a price to be determined by the municipality or in accordance with IC 5-1-11 and IC 5-3-1.

(b) Leases entered into under this chapter:

- (1) may be for a term not to exceed fifty (50) years;
- (2) may provide for payments from revenues received under this chapter, any other revenues available to the municipality, or any combination of these sources;
- (3) may provide that payments by the municipality to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;
- (4) must be based upon the value of the facilities leased; and
- (5) may not create a debt of the municipality for purposes of the Constitution of the State of Indiana.

(c) The legislative body of a municipality that has imposed a municipal food and beverage tax under this chapter may enter into a lease only after a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the legislative body may approve the execution of the lease on behalf of the municipality only if the legislative body finds that the service to be provided throughout the life of the lease will serve the public purpose of the municipality and is in the best interests of its residents.

(d) Upon executing a lease under this section, the municipal legislative body shall publish notice of the execution of the lease



1 and the approval of the lease in accordance with IC 5-3-1.

2 (e) An action to contest the validity of bonds issued or leases
3 entered into under this section may be brought not later than thirty
4 (30) days after the adoption of a bond ordinance or notice of the
5 execution and approval of the lease, as applicable.

6 (f) A pledge of revenues under this chapter is enforceable under
7 IC 5-1-14-4.

8 Sec. 17. The general assembly covenants with each municipality
9 that imposes a municipal food and beverage tax under this chapter
10 and the purchasers and owners of bonds, leases, obligations, or any
11 other evidences of indebtedness of a municipality payable from a
12 municipal food and beverage tax imposed under this chapter that
13 the general assembly will not repeal or amend this chapter in any
14 manner that will adversely affect the imposition or collection of a
15 municipal food and beverage tax imposed under this chapter so
16 long as the principal, interest, or lease rentals due under bonds,
17 leases, obligations, or other evidences of indebtedness of a
18 municipality that are payable from a municipal food and beverage
19 tax imposed under this chapter remain unpaid.

20 SECTION 2. An emergency is declared for this act.

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